



GOVERNMENT OF INDIA

# Chandigarh Administration Gazette

Published by Authority

NO. 126] CHANDIGARH, TUESDAY, OCTOBER 05, 2021 (ASVINA 12, 1943 SAKA)

CHANDIGARH ADMINISTRATION  
HOME DEPARTMENT

## Notification

The 23rd September, 2021

**No. 13303-HIII(3)-2021/13530.**—In exercise of the powers conferred by Section 20 of Code of Criminal Procedure, 1973, the Administrator, Union Territory, Chandigarh is pleased to appoint Ms. Palika Arora, PCS, Director Higher and School Education, Union Territory, Chandigarh as Executive Magistrate in the District of Chandigarh till she is working on deputation with the Chandigarh Administration.

Chandigarh :

The 20th September, 2021.

Administrator,  
Union Territory, Chandigarh.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

## Notification

The 4th October, 2021

**No. 194.**—Shri Nirbhey Singh Tewatia, Deputy Registrar, Punjab and Haryana High Court, Chandigarh has retired from services of this Court w.e.f. 30.09.2021 (A.N.) on attaining the age of superannuation i.e 58 years.

(Sd.). . .,

(NARENDER SINGH),  
Registrar (Administration)  
for Registrar General.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

## Notification

The 4th October, 2021

**No. 195.**—Smt. Saroj Agarwal, Deputy Registrar, Punjab and Haryana High Court, Chandigarh has retired from services of this Court w.e.f. 30.09.2021 (A.N.) on attaining the age of superannuation i.e 58 years.

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16:22:59 IST  
Reason: Published  
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(Sd.). . .,

(NARENDER SINGH),  
Registrar (Administration)  
for Registrar General.

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CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 1st October, 2021

**No. 13/1/9795-HII(2)-2021/11112.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 109/2016, dated 31.08.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DHEERAJ SHARMA S/O SHRI YASHPAL SHARMA, R/O 2005/2, HAZIWARA, AMBALA CITY,  
DISTRICT AMBALA (Workman)

AND

1. MONDIAL ASSISTANCE INDIA PRIVATE LIMITED THROUGH ITS MANAGER, 1ST FLOOR, DLF SQUARE, DLF CITY PHASE 2ND, M BLOCK, JAICHAND MARG, GURGAON.
2. AGA ASSISTANCE INDIA PRIVATE LIMITED, SCO NO.174, SECTOR 39, CHANDIGARH THROUGH ITS MANAGING DIRECTOR (Management)

**AWARD**

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that he was appointed as Road Recovery Operator for the period of three months on probation at Ahmedabad on 01.08.2008 at total salary package of ₹1,23,000/- per annum along with consequential benefits. After completion of probation period of three months he was regularized / confirmed by the management *vide* confirmation letter dated 26.12.2008. Work & conduct of the workman remained fully satisfactory through out his carrier and no adverse remarks whatsoever against the workman during his job were given and for which his salary was increased by the management from 31.12.2008 *vide* letter dated 12.03.2009 at the rate ₹1,25,028/- per annum along with other benefits by appreciating the work of the workman. Thereafter the services of the workman was transferred by the management at Chandigarh with effect from 28.05.2010 *vide* its letter dated 17.05.2010, where he remained in work upto 03.12.2014. The management had also awarded the workman for his good & satisfactory work *vide* letter dated 15.12.2011 and 01.08.2013. On 04.12.2004, the services of the workman were terminated by the management without any reason & arbitrarily and asked not to come on duty again by the officer of the company. The management had violated the terms & conditions of the provisions under Section 25-F & 25-G of the ID Act. No written

intimation of termination was given to the workman. No reason for retrenchment of the services of the workman or any advance notice for retrenchment or pay in lieu of notice thereof was given by the management prior to retrenchment of his services. Retrenchment of the workman is illegal, arbitrary and against the well settled principles of the natural justice. The workman had also served the legal notice to the management on 25.06.2015 for reinstatement of his services but no reply whatsoever has been received by the workman. Ultimately, it is prayed that termination be declared as null & void and the workman be reinstated into service with continuity of service, all attendant benefits and be granted relief of work, five days a week with financial benefits.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the workman had himself resigned from his position / employment by tendering his resignation in writing and accepting the full & final payment. It is stated that the workman was offered the position of Road Recovery Operator at Ahmedabad at the rate ₹1,23,000/- per annum in the company *vide* offer letter dated 31.07.2008. He was appointed *vide* letter dated 01.08.2008 and thereafter confirmed after completion of probation of three months *vide* letter dated 26.12.2008. Upto the year 2013, the conduct of the workman was satisfactory but by the end of the year 2013, the management received complaints against the workman and in the year 2014, he was found guilty of stealing the petrol from the vehicles belonging to the company. Thereafter, the management reprimanded the workman and in order to save his skin the workman tendered the resignation on 10.11.2014. The services of the workman were never terminated rather he himself tendered the resignation and left the company. The date mentioned i.e. 04.12.2014 is fictitious. The workman requested for clearance of all the pending dues while tendering his resignation on 10.11.2014 which were duly paid to him. The workman had accepted the cheque and issued a letter of no dues by the company dated 01.04.2015. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman examined himself as AW1. The workman also examined Shri Padam Sharma as AW2 and Shri Ashish Sharma as AW3. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Gurjeet Singh as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

#### **ISSUE No.1 :**

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that on 31.08.2008, he was appointed as Road Recovery Operator at Ahmedabad at total salary package of ₹1,23,000/- per annum along with other consequential benefits. He proved the copy of appointment letter as Exhibit 'W1'. He further deposed that on 01.12.2008, his services was regularized /

confirmed by the management after completing the probation period of three months *vide* letter dated 26.01.2008. Work & conduct of himself remained fully satisfactory throughout his career and no adverse remarks whatsoever against him during his job, for which his was increased by the company from 31.12.2008 *vide* letter dated 12.03.2009 at the rate ₹ 1,25,028/- per annum along with other benefits. He proved the copy of letter of confirmation dated 26.01.2008 and copy of letter whereby his salary was increased as Exhibit 'W2' and 'W3'. He further deposed that his services was transferred by the management at Chandigarh with effect from 28.05.2010, *vide* letter dated 17.05.2010 Exhibit 'W4', where he worked upto 03.12.2004. The company had also awarded him for his good & satisfactory work *vide* letter dated 15.12.2011 and 01.08.2013 Exhibit 'W4' and 'W5'. He was also been awarded as star of month in the month of October 2011. He proved the certificate of appreciation as Exhibit 'W6'. He further deposed that on 04.12.2014, he has been terminated by the management without any reason despite the fact that there is no complaint regarding the act & conduct during his entire service carrier. He further deposed that his colleagues used to hire services of the private commuters by printing out their own visiting card and were making money without the permission of the department. He made complaint to the departmental head many times but in vain. The colleagues fabricated a wrong story and planned to take revenge. Feeling aggrieved by the act & conduct of the management, he served a legal notice to the management on 25.04.2015 but the management neither retained him back on duty nor replied to the legal notice served by him.

8. The workman also examined Shri Padam Sharma as AW2, who deposed that Shri Dheeraj Sharma, workman was his colleague and he was appointed as Driver for the Heavy vehicles but he was forced to drive motorcycle for the work of the management. One of the Senior Official of the management namely Shri Gurjit Singh, had taken his resignation by adopting fraudulent means as the management had used his signatures as his resignation from service, which was obtained in advance for sanction of leave. He was also asked by Shri Gurjit Singh to steal diesel for him from the vehicles of the company.

9. The workman further examined Shri Ashish Sharma as AW3, who deposed that he was appointed as Road Recovery Operator at Chandigarh on 01.12.2014 and Shri Dheeraj Sharma, workman was his colleague. He was forced to resign because of his disc problem which started because of additional work of customer service engineering. For this work, he needed to drive motorcycle also even in bad health. During the service period, he was not provided with any security for working in risky areas and no helper was provided and he had to spend money from his own pocket for the security things like gloves etc.

10. Learned representative for the workman has argued that the workman was appointed as Road Recovery Operator on 31.08.2008 and his services were regularized on 01.12.2008. The work & conduct of the workman was satisfactory and his salary was increased from time to time. He was transferred from Ahmedabad to Chandigarh office from 28.05.2010 where he worked upto 03.12.2014 and on 04.12.2014 the services of the workman have been terminated illegally as there is no complaint regarding act & conduct during entire service carrier. No notice was ever served before the termination of the services of the workman. The termination was quite illegal with a plan to take revenge by his colleague. She prayed for reinstatement of the workman with continuity of service and full back wages.

11. On the other hand, the management examined Shri Gurjeet Singh as MW1, who deposed that the present claim filed by the workman is frivolous and in order to blackmail the company. The workman himself had resigned from his position with his own sweet free will. Work & conduct of the workman remained satisfactory upto 2013 but in the end of 2013 the management received the complaints against him in the year 2014. He was in habit of steeling petrol from the vehicles belonging to the company and in order to save his skin the workman had resigned from the services of the management at his own sweet free will. Copy of

resignation dated 10.11.2014 is Exhibit 'M1'. He further deposed that there was no occasion for the company to serve any advance notice to the workman as he himself submitted resignation with his own sweet will. He further deposed that date 04.12.2014 is factitious as he gave resignation on 10.11.2014. He further deposed that the workman requested for clearance of all his pending dues, which were duly paid to him. The copy of complete statement of account dated 04.02.2015 is Exhibit 'M2'. He had accepted the cheque and issued letter dated 01.04.2015 regarding no dues by the company Exhibit 'M3'. The matter was brought before the Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory Chandigarh vide letter dated 19.11.2015, copy of which is Exhibit 'M4'. He further deposed that the workman himself resigned from the service with his own sweet will so no relief can be granted to him.

12. Learned representative for the management has argued that the present claim is false and frivolous. It is not the case of termination rather the workman himself resigned from service with his own sweet free will. There is no retrenchment nor there is any termination. All dues of the workman had been paid to him and he had given letter with regard to no dues by the company. Copy of complete accounts statement and copy of resignation is on record. He prayed for dismissal of the present industrial dispute.

13. Further learned representative for the workman has argued that the management has taken signatures of the workman on the blank papers and misused later on. No resignation was ever given by the workman to the management. The workman was doing satisfactory work so how can he resign from the job.

14. After carefully considering the rival contentions of both the sides, I find that admittedly the workman was appointed on 01.08.2008 as Road Recovery Operator at Ahmadabad for three months and later on services of the workman was regularized on 01.12.2008. The appointment letter is Exhibit 'W1'. Admittedly the salary of the workman was increased during the service period from time to time as per Exhibit 'W2' & 'W3' and the company had awarded the workman for satisfactory work, it is also not disputed. Now the main bone of contention between the parties whether this is a case of illegal termination by the management or it is a case of resignation.

15. Perusal of the oral as well as documentary evidence no termination letter has been placed on record by the workman. It is simply stated that on 04.12.2014 the management refused to join and terminated his services without any reason. As per stand taken by the management, the management had duly proved resignation letter Exhibit 'M1' which is dated 10.11.2014 and it is written and signed by the workman himself in which the reason mentioned by him is that due to his personal work he is resigning on 10.11.2014. As per Exhibit 'M3', which is signed by the workman, i.e. acknowledgement receipt of cheque No.270054 for ₹ 33,525/- and no due by the company written by himself. Exhibit 'M2' is full & final settlement proved on record by the management. Moreover, the workman himself admitted during his cross-examination that *he had received full & final payment of provident fund*. Though he stated that the management used to get the blank paper from the workers residing outside Chandigarh, on account of their requirement of taking urgent leave. But he admitted that *it is correct that he has not mentioned the fact about the taking of his signature on blank paper by the management in his claim statement as well as affidavit Exhibit 'AW1/A'*. Hence, the plea taken by the workman that his signature was got by the company on blank paper and was misused by the management later on never been mentioned in the claim statement. So it seems that this plea is after thought. Moreover, the workman has failed to prove this fact on file that how and why the management misused his signatures on the resignation letter whereas *prima facie* resignation letter is written by the workman himself in his own handwriting by single flow. So it become clear that it is the case of resignation by the workman and not termination of service by the management as the management had fully proved through document by Exhibit 'M1' i.e. resignation dated 10.11.2014.



16. In the light of discussion made above, the workman has failed to prove that his services were terminated illegally by the management. Accordingly, this issue is decided against the workman and in favour of the management.

**RELIEF :**

17. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

Chandigarh :  
The 31st October, 2021.

(Sd.) . . . ,  
(ANSHUL BERRY)  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 1st October, 2021

**No. 13/1/9796-HII(2)-2021/11114.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 2/2017, dated 11.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MAYA DEVI W/O SHRI SUDAMA SINGH, HOUSE NO.350-A, HALOO MAJRA, RAVI DAS MOHALLA, UNION TERRITORY, CHANDIGARH (Workman)

AND

1. SUNRISE ENGINEERING PRODUCTION, PLOT NO.9, INDUSTRIAL AREA, PHASE -II, RAMDARBAR, CHANDIGARH THROUGH SHRI RAI SINGH MEHTA, MANAGING DIRECTOR.
2. SUNRISE ENGINEERING PRODUCT, PLOT NO.9, INDUSTRIAL AREA, PHASE-II, RAMDARBAR, CHANDIGARH (Management)

**AWARD**

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in nutshell is that she was in service of the management since 02.09.2000. On 05.05.2016 the son of Shri Rai Singh namely Nitin Mehta came to the factory and without any provocation & reason started abusing, man handed, tortured & sexually harassed the workman in front of other workers without any reason so she lodged DDR. Thereafter on 06.05.2016 when the workman reported for her duties, the management refused to take her on duty and informed that her services are no more required. The management has violated the provisions of Section 24-F, 25-G & 25-H of the ID Act.

3. The management contested the case of the workman and filed written statement that the workman had tendered her resignation on 04.03.2016 and demanded settlement of dues. As per resignation letter she

was to get relieved on expiry of one month period but at her request she was allowed to work for more than month upto 04.05.2016. On 05.05.2016 she was told that she had left her job and her services were not required. The workman misbehaved with other two workers and threatened them also with furious gestures and advances. The services of the workman were never terminated by the management.

4. From the pleadings of the parties, following issues were framed by my learned Predecessor :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. During the pendency of the present industrial, case taken up in Lok Adalat wherein the workman made the following statement :—

*"I do not press my present industrial dispute. The same may be disposed off accordingly."*

In view of the statement of the workman, the present industrial dispute is disposed off being not pressed for. Appropriate Government be informed. File be consigned to the record room.

The 11th September, 2021.

(Sd.) . . . ,  
(ANSHUL BERRY),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 1st October, 2021

**No. 13/1/9797-HII(2)-2021/11116.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 26/2021, dated 11.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ANURAG KUMAR TIWARI S/O SHRI HARISH KUMAR, HOUSE NO.414, NEAR SHREE SAI BABA MANDIR, RAVINDRA ENCLAVE, PHASE - I, BALTANA, SAS NAGAR, PUNJAB -140 604 (Workman)

AND

1. KAPSONS GROUP, PLOT NO.D-196, PHASE 8-B, INDUSTRIAL AREA, S.A.S. NAGAR THROUGH ITS MANAGING DIRECTOR / OCCUPIER AND MANAGER.
2. KAPSONS FASHION PRIVATE LIMITED / KAPSONS RETAIL / AGENCY ETC., PLOT NO.D-196, PHASE 8-B, INDUSTRIAL AREA, S.A.S. NAGAR THROUGH ITS MANAGING DIRECTOR / OCCUPIER AND MANAGER (Management)

**AWARD**

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in nutshell is that he was appointed by the management on 18.10.2012 as Chowkidar and was deputed at M/s Kapsons various businesses at Chandigarh. The management intentionally verbally terminated the services of the workman on 26.12.2019 grabbing the legal rights i.e. earned wages, over time allowance, bonus, cash payment in lieu of leave with wages and other legal rights. There is serious violation of Section 25-F, 25-G & 25-H of the ID Act.

3. Upon notice, the management appeared through its Accountant. During the pendency of the present industrial dispute, learned representative for the workman made the following statement:-

*"As per instruction of the workman he has settled his dispute with management and have received Rs.42921/- towards full and final settlement of his dispute and he did not want to pursue his present Industrial Dispute. The present Industrial Dispute may be disposed of accordingly."*

Thereafter the case taken up in Lok Adalat. In view of the above statement of learned representative for the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

The 11th September, 2021.

(Sd.) . . . ,  
(ANSHUL BERRY),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 1st October, 2021

**No. 13/1/9794-HII(2)-2021/11118.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 80/2017, dated 26.08.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :—

JAWINDER SINGH, HOUSE NO.1555, SECTOR 22-B, CHANDIGARH (Workman)

AND

CHANDIGARH INDUSTRIAL & TOURISM DEVELOPMENT CORPORATION LTD.,  
SCO NO. 121-122, SECTOR 17-B, CHANDIGARH THROUGH ITS MANAGING  
DIRECTOR (Management)

**AWARD**

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

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<https://egazette.chd.gov.in>*



2. Case of the workman in brief is that he was appointed by the management on 15.05.1990 as Clerk and remained in uninterrupted employment upto 02.09.2014 when his services were illegally & wrongly terminated by the management *vide* order No.P&A/P-I/253 dated 03.09.2014. He was drawing ₹ 27,500/- per month as wages, at the time of termination. He was issued memorandum No.P&A/P-I/3064 dated 12.02.2014 on the alleged charge of having willful absent from duty without the approval of competent authority for 34 days in three years. The memorandum was issued at very belated stage. The alleged 34 days absence was for three years period i.e. 2011, 2012 and 2013 whereas the charge sheet was issued in the year 2014. Alleged absence was as under :—

- i) Alleged absence during the year 2011 .. 4 days
- ii) Alleged absence during the year 2012 .. 18.1/2 days
- iii) Alleged absence during the year 2013 .. 11 days

The workman replied each & every letter received by him on the alleged charges on and when received. The corporation never informed him that his reply was not found suitable and unsatisfactory. He replied the charge sheet and denied the alleged charges. He explained in detailed about the alleged absence on the alleged dates as mentioned in the charge sheet. Whenever he had availed the leave due information was sent to the corporation through leave application or telephonically. The corporation had not denied it. With regard to absence from 15.04.2013 to 23.04.2013 the workman had informed the corporation telephonically that while coming to the office, he fell on the road due to fits and was taken to Civil Hospital by the Mohali Police. Documents related to his treatment at Mohali Hospital were supplied to corporation. The absence was not deliberate but was forced by the circumstances. From 15.05.2013 he was regular on his duties. There was no complaint about his work, conduct & absence or otherwise against him till the date of termination i.e. 02.09.2014. The corporation without applying his mind judicially hastens to go for an inquiry by appointing one Mr. H. R. Ganger, IAS (Retired) as Inquiry Officer, who was biased person. The workman requested the corporation for change of Inquiry Officer but the corporation did not change the Inquiry Officer, which was denial of fair & proper opportunity and denial of natural justice and fair play. The inquiry was full of defects and not fair & proper. The Inquiry Officer without appreciating the material brought on record proved the alleged charges against the workman. The Managing Director agreeing with the findings of the Inquiry Officer passed an order of dismissal. The corporation had already punished the workman on the charges of alleged absence for the year 2011-12. There cannot be two punishments for one offence. The workman made an appeal before the Chairman-cum-Appellate Authority, CITCO, Chandigarh against the order dated 02.09.2014 of the Managing Director, CITCO, Chandigarh but the appellate authority without passing any speaking order dismissed the appeal. The workman served upon the management a demand notice dated 18.06.2015 for his reinstatement but the workman neither replied the same nor took the workman back on duty. The Conciliation Officer was requested for his intervention. The management refused to take the workman back on duty before the Conciliation Officer, Union Territory Chandigarh. He remained unemployed during the period i.e. from the date of termination till date. Ultimately, it is prayed that the workman be reinstated with full back wages, continuity of service and all attendant benefits and without any change in his service condition.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the action of the management in awarding punishment of dismissal from service is legal, just, proper, in accordance with the service condition of the workman. He indulged in misconduct for remaining absent from duty willfully, intentionally and without any intimation or prior sanction of leave on number of occasions for which he was chargesheeted on earlier occasion also and subsequently punishment of reduction of his pay band / scale to the minimum entry pay band / scale of the Clerk was given to him. Despite the punishment the workman did not improve his conduct and behavior and continued remaining absent from duty willfully and intentionally. He was again charge sheeted *vide* charge dated 12.02.2014. The workman filed reply denying charges. Thereafter Inquiry Officer was appointed, who conducted a fair &

proper inquiry by giving full opportunity to the workman and submitted his report proving the charges leveled against him. A show cause notice dated 16.06.2014 along with copy of inquiry report was issued. The workman filed reply and he was called for personal hearing. The disciplinary authority after considering the inquiry proceedings, relevant documents, reply filed by the workman, submission made by him during personal hearing, inquiry report and by applying his mind dispassionately awarded the punishment of dismissal from the services of the corporation with immediate effect. On merits, it is pleaded that the workman was appointed on 15.05.1990 and was dismissed from service on 03.09.2014. He was chargesheeted on 12.02.2014 on the charges of having willfully absent from duty without the approval of competent authority for 34 days for the year 2011, 2012 & 2013. The workman filed reply against chargesheet. He was regular on his duty from 15.05.2013 to 03.09.2014 i.e. the date of termination of service. He was dismissed from services of the management due to willful absent from the duty between the period 16.12.2011 to 14.05.2013. The corporation had appointed the Inquiry Officer after giving sufficient time to the workman to reply the chargesheet and he had fully availed the said opportunity. The inquiry conducted against the workman was fair & proper and full opportunity was given to the workman during the inquiry proceedings by the Inquiry Officer. The disciplinary authority has passed the dismissal order. The workman had filed an appeal against the dismissal order which was dismissed by the appellant authority by passing a speaking order. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled, if any ? OPW
2. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Ms. Rajinder Kaur - Junior Bill Assistant (P&A Branch) as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

#### **ISSUE No. 1 :**

7. Onus to prove this issue was on the workman and to discharge the same, the workman examined himself as AW1 and deposed that he was appointed by the management on 15.05.1990 as Clerk and remained in uninterrupted employment upto 03.09.2014 when his services were illegally & wrongly terminated by the management vide order No.P&A/P-I/253 dated 03.09.2014. He was issued memorandum No.P&A/P-I/3064 dated 12.02.2014 on the alleged charge of having willfully absent from duty without the approval of competent authority for 34 days in three years. The alleged 34 days absence was for three year period i.e. 2011, 2012 and 2013 but the charge sheet was issued in the year 2014. He also deposed that he replied each and every letter received by him on the alleged charges but the corporation never informed him that his reply was not found suitable and unsatisfactory. He replied the charge sheet and denied the charges and made his position clear that whenever he had availed the leave due information was sent to the management through leave application or telephonically. He further deposed that regarding alleged absence from 15.04.2013 to 23.04.2013 he informed the corporation telephonically that while coming to office, he fell on the road due to fits and was taken to Civil Hospital by the Mohali police. From 15.05.2013 onwards he was regular on his duties and there was no complaint about his work, conduct & absence or otherwise against him till the date of termination i.e. 02.09.2014. He further deposed that the corporation without applying his mind judicially hastens to go for an inquiry by appointing Shri H. R. Ganger, IAS (Retired) as Inquiry Officer, who is biased person and despite his request for change of the Inquiry Officer, the corporation did not change the Inquiry Officer. The inquiry was full of defects and not fair & proper. The Managing Director agreeing with the findings of the Inquiry

officer passed an order of dismissal. The corporation had already punished him on the charges of alleged absence for the year 2011-12. He further deposed that he made an appeal before the Chairman-cum-appellate authority, CITCO, Chandigarh against the order dated 03.09.2014 which was dismissed without passing any speaking order on 11.08.2015.

8. Learned representative for the workman has argued that the workman was appointed by the management on 15.05.1990 as Clerk and he remained in unrebutted employment upto 03.09.2014. He was issued memorandum dated 12.02.2014 on the charges of willful absent from duty without approval of the competent authority for 34 days in three years. He replied each and every letter received by him on the alleged charges but his reply was found unsatisfactory. He further argued that regarding his absence from 15.04.2013 to 23.04.2013 the workman informed telephonically that while coming to office he fell on the road due to fits and was taken to Civil Hospital by Mohali police so the absence was not deliberate but was forced by circumstances. Earlier no complaint about his work & conduct was found against him. He further argued that the inquiry conducted by the Inquiry Officer was not fair & proper and he was dismissed on 03.09.2014 on the basis of inquiry report. Further he filed appeal before the Chairman-cum-appellate authority, CITCO on 07.10.2014 against the order dated 03.09.2014 but the appellate authority passed the speaking order dismissing the appeal on 11.08.2015 which is illegal & unjustified. He prayed for reinstatement of the workman as termination is illegal, wrong, unjustified, motivated and against the principles of natural justice and unfair labour practice.

9. On the other hand, the management examined Ms. Rajinder Kaur - Junior Bill Assistant (P&A Branch) as MW1, who deposed that she is working as Junior Assistant with the management and authorized to depose in present case vide authority letter dated 19.11.2019 Exhibit 'R1'. The present reference is without jurisdiction and not maintainable as the action of the management in awarding punishment of dismissal from service is legal, just, proper, in accordance with the service condition of the workman and has been taken after holding a fair & proper inquiry by giving full opportunity to show cause and personal hearing etc. by the disciplinary authority. She further deposed that the workman had indulged in misconduct for remaining absent from duty willfully, intentionally and without any intimation or prior sanction of leave on number occasions for which he was charge sheeted on earlier occasions also and subsequently punishment of reduction of his pay band / scale to the minimum entry pay band / scale of the Clerk was given to him. Despite the punishment he did not improve his conduct & behavior and continued remaining absent from duty willfully and intentionally. He absented himself from duty for 34 days on 12 occasions between the period from 16.12.2011 to 14.05.2013 for which he was charge sheeted vide charge sheet dated 12.02.2014, copy of the same is Exhibit 'R2'. On denial of charges by the workman the Inquiry Officer was appointed, who conducted a fair & proper inquiry by giving full opportunity to the workman and submitted his report, wherein the charges leveled against the workman were fully proved. Copy of the inquiry report Exhibit 'R3'. She further deposed that after considering the entire record of the inquiry, inquiry proceedings, relevant record and documents and applying his mind dispassionately the disciplinary authority issued a show cause notice dated 16.06.2014 along with copy inquiry report. The workman filed his reply and he was called for personal hearing by the disciplinary authority on 25.07.2014, which was postponed to 01.09.2014. Thereafter the disciplinary authority after considering the reply of the workman, submissions made during the personal hearing and by applying his mind dispassionately awarded the punishment of dismissal from service of the corporation with immediate effect. Copy of order dated 01.09.2014 is Exhibit 'R4'. She further deposed that aggrieved by the order of the disciplinary authority the workman filed an appeal before the appellate authority, who after going through the entire record of the case and considering the appeal and submissions made by the workman during the personal hearing and by applying his mind dispassionately rejected the appeal of the workman by passing speaking order on 11.08.2015. Copy of order dated 11.08.2015 is Exhibit 'R5'. Punishment awarded to the workman is quite commensurate with the gravity of the charges leveled against him.

10. Learned representative for the management has argued that the workman had indulged in misconduct for remaining absent from duty willfully, intentionally and without any intimation on number of occasions

but despite the punishments the workman did not improve his conduct and he absented from duty for 34 days. The witness of the management had proved the copy of charge sheet Exhibit 'R2', copy of inquiry report Exhibit 'R3' and copy of dismissal order Exhibit 'R4' and copy of order the appellate authority Exhibit 'R5'. He further argued that opportunity was given to the workman before passing any order but his reply was found unsatisfactory so the inquiry conducted against the workman is fair & proper and full & fair opportunity was given to the workman during the inquiry proceedings. He prayed for dismissal of the present industrial dispute.

11. After carefully considering the submissions of learned representative for the parties, I find that it is the admitted case of the parties that the workman was appointed with the management on 15.05.1990 as Clerk and he was issued memorandum No.P&A/P-I/3064 dated 12.02.2014 on the charges of willful absence from duty without approval of the competent authority for 34 days in three years. The main grudge of the workman is that his absence from 15.04.2013 to 23.04.2013, nine days, was not willful rather he duly informed the office that while coming to office he fell on the road due to fits and he was taken to Civil Hospital by the Mohali police but the management without considering the reply started the inquiry proceedings.

12. After the perusal of the oral as well as documentary evidence on record it reveals that the management's witness duly proved copy of charge sheet Exhibit 'R2', copy of inquiry report Exhibit 'R3' and copy of dismissal order Exhibit 'R4' and copy of order the appellate authority Exhibit 'R5'.

13. Further during his cross-examination, the workman himself clearly admitted that **it is correct that he was charge sheeted on 12.02.2014 on the charges of remained absent from duty without information. He replied the charge sheet and inquiry was held and during the inquiry proceedings he was afforded full opportunity to defend his case and after that he was awarded punishment by the punishing authority on the basis of inquiry report.** He further admitted that **it is correct that a show cause notice dated 16.06.2014 along with the copy of inquiry report was given to him and he filed the reply on 03.07.2014. He was also given personal hearing on 25.07.2014 and on 01.09.2014 by the punishing authority. The punishing authority after giving the personal hearing awarded the punishment vide order dated 01.09.2014 and it is correct that he filed the appeal against the punishment order dated 01.09.2014 before the appellate authority. It is correct that he was given personal hearing by the appellate authority and order of punishing authority was upheld by the appellate authority.**

14. Meaning thereby the workman has admitted that he has been duly given opportunities of personal hearing against the charges leveled against him and as per the inquiry file the workman had indulged in misconduct for remaining absent from duty willfully without any prior intimation or sanction of leave on number of occasions. The disciplinary authority after considering the entire record of the inquiry proceedings issued a show cause notice dated 16.06.2014 along with inquiry report issued show and directed the workman to submit his reply within 15 days. The workman had submitted his reply on 03.07.2014. In pursuance of that he was called for personal hearing by the disciplinary authority on 25.07.2014. Then the personal hearing was postponed to 10.09.2014 and the disciplinary authority after hearing the workman and after applying its mind awarded the punishment of dismissal from the service vide order dated 01.09.2014. Then the workman preferred the appeal dated 07.10.2014 against the order of disciplinary authority and the appellate authority rejected the appeal after considering the inquiry report and relevant documents etc.

15. Further reliance is placed on citation titled as **Delhi Transport Corporation Versus Sardar Singh, (2004)7 SCC 574** in which it is held that when the employee absented himself from duty even without sanctioned leave for very long period, it prima facie shows lack of interest in work. In the present case in hand, the workman was habitual absentee which establishes the lack of interest in work. In citation titled as **Deen Dayal Versus Delhi Transport Corporation, 2017(3) SLJ 205** the Hon'ble Delhi High Court while placing reliance on **Delhi Transport Corporation Versus Sardar Singh and State of Madhya Pradesh Versus Harihar Gopal** categorically laid down that where the workman has been un-authorisedly absent from work,



merely because he has subsequently sent applications for leave as merely because the period of un-authorised leave has been treated as 'leave without pay', the same does not detract from the employer's right of removal of the workman from service of employer, where the governing standing orders of the employer treat un-authorised leave as mis-conduct, permitting removal from service.

16. Similar view was taken by the Hon'ble Double Bench of Jharkhand High Court in **Life Insurance Corporation of India & Others Versus Sh. Arvind Kumar Singh & Others, 2019(2) JCR 355**. In view of the aforesaid discussion made, the workman has failed to prove on record that he was not given any fair opportunity of being heard and the charges leveled against him is unjustified and his absence was due to bonafide reasons and he has been terminated illegally by the management. Accordingly, this issue is decided against the workman and in favour of the management.

**RELIEF :**

17. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 26th August, 2021.

(Sd.) . . . ,  
(ANSHUL BERRY),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 16th September, 2021

**No. 13/1/9789-HII(2)-2021/10360.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 68/2015, dated 06.08.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAKESH KUMAR CHAUHAN S/O LATE SHRI RAM RAJPAL SINGH, R/O HOUSE NO.4/1277, MOHALLA JAFFAR NAWAZ, POST OFFICE KHALAPAAR, DISTRICT SAHARANPUR, U.P. (Workman)

AND

1. VIP INDUSTRIES LIMITED (EARLIER BLOW PLAST LIMITE) DGP HOUSE, 88-C, OLD PRABHA DEVI MARG, DADAR (WEST), MUMBAI -400025 THROUGH ITS MANAGING DIRECTOR MS. RADHIKA PIRAMAL AND CHAIRMAN SHRI DALIP PIRMAL.
2. GENERAL MANAGER (HRD), VIP INDUSTRIES LIMITED (EARLIER BLOW PLAST LIMITE) DGP HOUSE, 88-C, OLD PRABHA DEVI MARG, DADAR (WEST), MUMBAI - 400025.
3. BRANCH MANAGER, VIP INDUSTRIES LIMITED (EARLIER BLOW PLAST LIMITED), S.C.O. NO.844, 1st FLOOR, NAC MANIMAJRA, CHANDIGARH. (Management)



**AWARD**

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that his services were terminated illegally in violation of Section 25-F, 25-G & 25-H of the ID Act and also in violation of principles of natural justice, equity & fair play and he raised the industrial dispute before the Conciliation Officer, Union Territory Chandigarh and the conciliation proceedings stand closed and he was advised to refer under Section 2-A of the Industrial Disputes (Amendment) Act, 2010. The workman joined the services of the management in the year 1982 and thereafter continuously worked with the management upto the year 1993 as Senior Accounts Assistant. But in the year 1993 when he was transferred from Asansol to Chandigarh, TA & other transportation charges were not paid by the management. The workman raised the dispute before the Labour Court and the Labour Court decided the said dispute in favour of the workman due to which the management decided to teach a lesson to the workman and issue a vague charge sheet dated 15.11.1996 against the workman. The workman replied to the charge sheet and thereafter in order to prejudice the legal rights of the workman, the management appointed out-rightly an Inquiry Officer to conduct an inquiry against the workman on vague charges of absenteeism. The inquiry was not conducted in a fair & proper manner by the Inquiry Officer. The Inquiry Officer is totally biased in favour of the management. The inquiry report was submitted on 29.10.1999 against the workman but no final decision was taken by the management on the inquiry report till date. Before completion of the inquiry, the workman requested the management on 24.09.1999 to allow him to join duty but his request was not accepted for the reason best know to the management. The workman had already completed more than 240 days of service with the management. The management leveled the false allegations in the charge sheet and started harassing the workman in order to force him to leave the services of the management. The management from the year 1996 till the year 1999 kept the workman in abeyance and on 20.10.1999 inquiry report was furnished to the workman by the Inquiry Officer stating therein that the charges leveled against the workman are proved and the workman was held guilty for the major misconduct whereas the inquiry so conducted by the Inquiry Officer was not fair & proper and was against the principles of natural justice. The workman was not given opportunity to cross-examine the witnesses. The Inquiry Officer is totally biased in favour of the management and had not conducted the inquiry in fair & proper manner. Proper opportunity was not offered to the workman by the Inquiry Officer. The workman had filed a civil suit against the said inquiry in the Court of Civil Judge, Junior Division, Union Territory Chandigarh wherein the management admitted that the workman was informed *vide* letter dated 12.03.2001 that the manager HRD of the management is planning to reach Delhi shortly and the workman will be given opportunity of personal hearing but thereafter till date no personal hearing was granted to the workman. The civil suit was dismissed on 21.01.2014 and thereafter civil appeal filed in the Court of District Judge, which was withdrawn with a liberty to file fresh litigation before the Labour Court in order to avail the remedy for the redressal of his grievance. The workman challenged his illegal termination on the grounds that he had completed more than 240 days of service with the management. No notice / notice pay, retrenchment compensation was offered by the management to the workman before terminating his services in violation of provisions of Section 25-F of the ID Act. Juniors to the workman namely Pawn Kumar, Narinder Pal Singh, Ashok Ram Saroop and Ashwani Sharma remained continued in service of the management. The principle of 'first come last go' had not been applied by the management and there is violation of Section 25-G of the ID Act. After termination / denying the services to the workman, fresh persons such as Narinder Singh, Prem Chand, Loveleen Sayal had been appointed by the management from time to time in the accounts department so there is violation of Section 25-H of the ID Act. The alleged inquiry conducted by the Inquiry Officer is not fair & proper, biased without following the principles of natural justice. No list of witnesses or list of documents were supplied by the Inquiry Officer. The workman was not given chance to cross-examine the management's witness. During the inquiry proceedings no subsistence allowance was paid to the workman by the management. The workman requested for assistance of an Advocate, which was declined. Even co-worker was not permitted to assist the workman. Termination of the workman is illegal, unjust and

arbitrary and is in violation of principles of natural justice. No opportunity of hearing was given to the workman before denying him the services. Even after the inquiry report no written orders were passed by the management. When the workman approached the management for letting him to join the duties he has been verbally denied the services and not permitted to join the duties. The post of the Senior Accounts Assistant is still there with the management. Verbal termination is totally illegal, unjust and arbitrary. Ultimately, it is prayed that the workman be reinstated with full back wages and continuity of service with effect from 27.04.1999 when he was not allowed to join the duty.

3. The management contested the case of the workman and filed written statement raising preliminary objections that the present claim is barred by delay & laches as it has been filed after delay of more than 18 years. The workman is stopped by the principles of res-judicata from raising the present claim again which has already been adjudicated by a competent court and decided against the workman. On merits, it is pleaded that the workman was chargesheeted on account of willful absence from his duty and after a proper & fair inquiry charges have been proved against him. Issue which is involved in the present reference has already been dealt and decided by Shri Hasandeep Singh Bajwa, Civil Judge, Junior Division, Union Territory Chandigarh vide its order and judgment dated 21.01.2014 in a civil suit filed by the workman himself. The Learned Additional District Judge, Chandigarh, at the time of granting the liberty, was pleased to observe that though the liberty has been given to the workman but it does not mean that it will any kind of certificate of condoning the delay and the law of limitation is still applying plaintiff case. The workman had voluntarily abandoned the job and was no longer interested in joining back the job. The management had taken action against the workman on account of absence from service for the period 1996 to 1999. The management had complied with all principles of natural justice during the inquiry proceedings and full opportunity had been provided to the workman. No post of Senior Account Assistant is vacant with the management. Other averments of the case of the workman were denied and ultimately, it is prayed that the present reference be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the claim of the workman is bad on account of res-judicata ? OPM
2. Whether the claim of the workman is bad for delay & laches ? OPM
3. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
4. Relief.

5. In support of the case, the workman examined himself as AW1 and closed the evidence. On the other hand, the management examined Ms. Neeta Kumari - Record Clerk, District Court, Sector 43, Chandigarh as MW1 and Shri Loveleen Kumar Syal - Assistant Manager (Commercial) as MW2. Learned representative for the management closed the evidence.

6. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

#### **ISSUE NO.1 to 3 :**

7. Onus to prove issue No.1 & 2 was on the management whereas onus to prove issue No.3 was on the workman but all these issues are taken up together for the sake of convenience to avoid repletion of discussion. In support of his case, the workman examined himself as AW1 and deposed that his services were terminated illegally in violation of Section 25-F, 25-G & 25-H of the ID Act and principles of natural justice, equity and fair play. He joined the services of the management in the year 1982 and continuously worked with the management upto the year 1993 as Senior Accounts Assistant. When he was transferred from Asansol to

Chandigarh TA and transportation charges were not paid to him so he raised the dispute before the Labour Court in the year 1993, which has been decided in his favour, due to this fact the management issued one charge sheet on 15.11.1996 and he replied to the charge sheet. The Inquiry Officer was appointed but inquiry was not conducted in a proper manner which is totally biased in favour of the management and inquiry report was submitted on 29.10.1999. He further deposed that before the completion of the inquiry report he requested the management on 27.04.1999 to allow him to join the duties but his request was not accepted. He has completed more than 240 days of service of the management. The management from the year 1993 to 1996 and from 1996 to 1999 kept himself in abeyance and on 20.10.1999 inquiry report was furnished to him by the General Manager. He was not given opportunity to cross-examine the witness. The Inquiry Officer is totally biased in favour of the management. Whenever he approached the management he had been verbally denied his service. He also filed civil suit against the said inquiry in the Court of Civil Judge, Junior Division, Union Territory Chandigarh. The management while appearing before the said court has admitted that he was informed vide registered letter dated 12.03.2001 that the Manager HRD of the management is planning to reach Delhi shortly and he will be given opportunity of personal hearing but he was not granted personal hearing. The civil suit was dismissed on 21.01.2014 and against the said judgment and decree civil appeal was filed, which was withdrawn with liberty to file fresh litigation before the Labour Court. He further deposed that he has been harassed by the management since long. The termination of himself is illegal, unjust and arbitrary. The post of Senior Accountant is still there and nature of the job is continuing one and need of accounts personnel is always remained with the management but he was not permitted to join duties. Copy of order of the appellate Court of Shri R. K. Jain - District & Sessions Judge, Chandigarh is Exhibit 'W1'. Verbal termination is illegal, unjustified, arbitrary and against the principles of natural justice.

8. Learned representative for the workman has argued that the workman joined his services with the management in the year 1982 as Accounts Assistant and continuously worked with the management upto the year 1993 as Senior Accounts Assistant. He was transferred from Asansol Branch to Chandigarh but was not paid TA and other actual transport charges so he filed an application against the management before the Labour Court which was decided in his favour Exhibit '14'. He further argued that on 23.08.1993 his wife was sick and he got verbal sanction to leave to look after her and due to sickness he continuously requested to extend the leave but after a period of three years he was charge sheeted on 15.11.1996 *vide* Exhibit 'P1' and he replied to the charge sheet. The Inquiry Officer was appointed but he was biased inquiry in favour of the management and submitted his report against the workman. The workman had duly proved the document Exhibit 'P5' through which he requested the management on 27.04.1999 to allow him to join the duties but his request was not accepted. He further argued that the reply of the inquiry report was sent to the General Manager and the workman was informed by the management *vide* letter dated 12.03.2001 Exhibit 'P10' that the Manager HRD of the management will give opportunity of personal hearing to him and the workman immediately responded to the same *vide* letter Exhibit 'P11' but no personal hearing was given to him. He further argued that the workman had filed civil suit in the Court of Civil Judge, Junior Division, which was dismissed on 21.01.2014 and thereafter the civil appeal was filed in the Court of Learned District Judge, Chandigarh, however, the said appeal was withdrawn with a liberty to file fresh litigation before the Labour in order to avail the remedy for redressal of his grievances. He further argued that termination of the workman is illegal as he had completed 240 days with the management but no notice / notice pay, retrenchment compensation was given to the workman and juniors to the workman continued in service and fresh persons were appointed by the management. Hence, there is violation of Section 25-G & 25-H of the ID Act and the Inquiry Officer conducted the inquiry in biased manner without following the principles of natural justice. The workman was harassed and kept in abeyance when he approached the management to allowing him join duty. He was verbally denied the services. The post of Senior Accounts Assistant is still there with the management. He further argued that the workman had not received any termination letter from the management. The department has not sanctioned the leave and the medical record of his wife was not considered when submitted. He prayed for allowing the present industrial dispute.

9. In order to rebut the claim of the workman management examined Ms. Neeta Kumari - Record Clerk, District Court, Sector 43, Chandigarh as MW1, who deposed that she had brought the original record of Civil Suit No.292 of 27.07.2008 case titled as Rakesh Kumar Versus VIP Industries and Civil Appeal No.51 dated 25.02.2014 case titled as Rakesh Kumar Versus VIP Industries. She had proved the documents Exhibit 'M1' to 'M13' and Mark 'A' & 'B'.

10. The management also examined Shri Loveleen Kumar Syal - Assistant Manager (Commercial) as MW2, who deposed that he has been authorized to make statement and the present claim is not maintainable being barred by delay & latches. The claim is not maintainable and is abuse of process of law as matter of the workman has already been dealt by Shri Hasandeep Singh Bajwa, Civil Judge, Junior Division, Union Territory Chandigarh *vide* order and judgment dated 21.01.2014. The claim of the workman is liable to be dismissed on account of principles of resjudicata. The workman has withdrawn the appeal filed under Order 23 Rule 1 CPC. He further deposed that the Inquiry Officer conducted the inquiry was per rules. Show cause notice was issued to the workman and he was afforded full opportunity of personal hearing. The workman remained absent from duty without taking permission from the competent authority. The workman was found guilty of remaining absent from duty by the Inquiry Officer on the basis evidence produced in the inquiry so the inquiry was conducted as per rules and after following the principles of natural justice.

11. Learned representative for the management has argued that the management had conducted the inquiry as per law. The workman earlier filed civil suit which was dismissed and later on filed appeal before the Additional District & Sessions Judge which was withdrawn with the liberty to file fresh litigation with the Labour Court. The management has referred to cross-examination of the workman in which he had admitted regarding fairness of inquiry. He further argued that there is delay & latches in filing the main reference. It is further argued that it is a case of abandonment of duty on the part of the workman not termination by the management. He has placed reliance on citation **Sh. Dhir Singh Beldar Versus The Presiding Officer, Labour Court, Gurdas & Others, 2010(7) SLR 764 (P&H); Jaswant Singh Versus Industrial Tribunal, Patiala & Others, 2014(10) SCT 156 (P&H); Water Supply & Sewage Disposal Versus P.O. Labour Court & Another, 2013(6) AD (Delhi) 315 and Raj Kumar Rastogi Versus Presiding Officer, Labour Court - X & Another, 2015(3) LLJ 55 (Delhi).** Further reliance is made on **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(1) SCT 1088 (SC) and Prithvi Singh Versus Executive Engineer, HPSEB Limited, 2019 Lab LR 1236 (HP).** He prayed for dismissal of the claim of the workman.

12. After giving my careful consideration to the rival contentions of both the side, I find that admittedly the workman joined with the management in the year 1982 as Accounts Assistant and he has earlier raised the dispute before the Labour Court which was decided in his favour and admittedly the workman was charge sheeted on 15.11.1996 but as per averments of the workman, the charge sheet was vague. But this argument of the workman does not inspire confidence. As per record the workman absented from duty i.e. from 23.08.1993 to 29.09.1993. Show cause notice was issued to the workman for absenting from duties with effect from 23.08.1993 and remaining absent in the month of October and November 1993. The said show cause notice was duly replied by the workman *vide* letter dated 05.12.1996 Exhibit 'M4'. Thereafter a regular inquiry was conducted and the workman appeared before the Inquiry Officer on 17.04.1999, 27.04.1999, 15.05.1999, 29.05.1999 and also cross-examined the witness of the management. After completion of inquiry, inquiry report was provided to the workman along with show cause notice dated 18.10.2000 Exhibit 'M7' which was duly replied by the workman on 25.11.2000 Exhibit 'M8'.

13. The workman filed a civil suit in which the workman has challenged the inquiry conducted against the workman before the learned Civil Judge, Junior Division, Chandigarh, who dismissed the suit of the workman



on merits after perusal of the inquiry proceedings conducted by the Inquiry Officer and held the inquiry as legal, justified and there is no illegality in serving the charge sheet upon the workman by the company. It is also held in the judgment that the plaintiff had absented himself from his duties with effect from 23.08.1993 without taking any permission or sanctioning his leave. He kept on sending the telegrams for extension of leave despite the fact that the defendant company informed him about his absence from duties is without permission but no reason has been disclosed by the plaintiff. Further after dismissal of the civil suit, the workman filed appeal before the appellate authority and then had withdrawn the appeal under Order 23 Rule 1 with liberty to approach the Labour Court. Meaning thereby the findings of the Civil Court has already been given on the record as it is settled law that once an issue has been decided by the competent court having competent jurisdiction, then the same cannot be decided by subsequent court in subsequent proceedings and is hit by the principles of resjudicata. No doubt the appeal before the Learned District Judge was dismissed as withdrawn with liberty to file fresh litigation before the Labour Court. However, it is mentioned in order of learned District Judge that this order will not be any certificate for condoning the delay, if any, in presentation of the case before the Labour Court. Hence, the present claim is also filed after long time and there is delay in filing the present case. In **Nedungadi Bank Limited Versus K. P. Madhavan Kutty (supra)** the Hon'ble Supreme Court of India as held as under :—

*"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."*

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited (supra)**.

14. The workman had absented himself and chose to sleep over his right for a long period. In this regard reliance is placed on citation **Sh. Dhir Singh Beldar Versus The Presiding Officer, Labour Court, Gurdas & Others (supra)**, **Jaswant Singh Versus Industrial Tribunal, Patiala & Others (supra)**, **Water Supply & Sewage Disposal Versus P.O. Labour Court & Another (supra)** and **Raj Kumar Rastogi Versus Presiding Officer, Labour Court - X & Another (supra)**.

15. In the light of discussion made above, it is held that the claim of the workman is bad on account of res-judicata and the claim of the workman is bad for delay & laches. Further it is held that the workman has failed to prove that his services were terminated illegally by the management. Accordingly, issue No.1 & 2 is decided in favour of the management and against the workman whereas issue No.3 is decided against the workman and in favour of the management.



**RELIEF :**

16. In the light of findings on the issue No.3 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 6th August, 2021.

(Sd.) . . . ,  
(ANSHUL BERRY),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 16th September, 2021

**No. 13/1/9791-HII(2)-2021/10365.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 7/2017, dated 12.08.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KAMAL KISHORE, HOUSE NO.266/2, KHUDA LAHORA, NEAR RADHA KISHAN MANDIR, CHANDIGARH (Workman)

AND

COLLEGE SHOES, S.C.O. NO.30, SECOTR 17-E, CHANDIGARH THROUGH ITS AREA SALES MANAGER (Management)

**AWARD**

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that he was appointed by the management as Stock Boy in the month of March, 1997 and was later on promoted to the post of Salesman. He worked with the management upto 27.10.2016 when his entry at College Shoes was banned on the pretext of transfer from Chandigarh to Shilong. The workman was drawing ₹ 14,300/- per month as wages at the time of banning entry in to shop. On 27.10.2016, the workman was issued letter dated 16.10.2016 by the management of M/s Aero Club vide which his services were transferred to Shilong, District Meghalaya by the Senior General Manager. According to the letter the workman was to join duty at Shilong on 22.10.2016. The attendance of the workman used to mark by the management of M/s College Shoes and wages were being paid by M/s College Shoes to the workman. The workman was an employee of M/s College Shoes for all intent & purpose. He has no relation whatsoever with M/s Aero Club and not employee of M/s Aero Club. M/s Aero Club cannot transfer the services of the employee of M/s College Shoes from Chandigarh to Shilong. M/s College Shoes has no office, work place and branch at Shilong. Transfer from Chandigarh to Shilong by the management of M/s Aero Club and refusal of entry in the shop by the management of M/s College Shoes is illegal, wrong, motivated, against the principles of natural justice and unfair labour practice. Banning of entry in the shop and refusal of work by the management of M/s College Shoes, amounts to termination under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act as no charge sheet was issued, no inquiry was held and no retrenchment compensation was paid to the workman at the time of termination. The workman lodged a complaint dated 05.11.2016 with the Assistant Labour Commissioner, Union Territory Chandigarh. The Assistant Labour Commissioner fixed a number of dates for an amicable settlement but no settlement could be affected due to non-appearance of the management on the last date of hearing. The workman than served

upon the management a demand notice dated 09.12.2016 for his reinstatement but the management did not file reply and also did not take the workman back on duty. The matter was referred to Conciliation Officer, Union Territory Chandigarh for his intervention. The management deliberately did not appear on the last date of hearing as he was directed by the Conciliation Officer to produce the attendance and wage record of both the firms. Ultimately, it is prayed that he be reinstated with continuity of service, full back wages and without any change in his service condition.

3. Upon notice, none appeared on behalf of the management as such the management was proceeded against *ex parte*. Thereafter the management filed the application for setting aside order, which was allowed. The management filed the written statement raising preliminary objections that the management had never terminated the services of the workman rather he was transferred to Shilong *vide* letter dated 16.10.2016, which was earlier refused to receive and subsequently accepted on 27.10.2016. Instead of joining his duties at transferred place, the workman started remaining absent from his duties with effect from 27.10.2016 without any prior intimation, sanction or approval of leave from the management. Since the workman had already admitted the fact of transfer of his service from Chandigarh to Shilong, Meghalaya so the same cannot be challenged before this Court. The appropriate Government for the same is the Government of Shilong, Meghalaya and not the Government of Chandigarh. On merits, it is pleaded that the services of the were transferred from Chandigarh to Shilong, Meghalaya *vide* transfer letter dated 16.10.2016 and he was asked to join his duties with effect from 23.10.2016 but the workman failed to resume his duty at the transferred place and started remaining absent from his duties. M/s Aero Club and College Shoes are sister concern and the workman is well conscious of this fact. As per terms & condition of the employment of the workman, his services were transferred. The services of the workman were transferred and were never terminated so Section 2(oo) and Section 25-F of the ID Act are not applicable in the present case. Upon receipt of notice from the Assistant Labour Commissioner, the management duly appeared and vindicated its stand. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether this Court has no territorial jurisdiction to try & adjudicate the industrial dispute ? OPM
3. Relief.

5. Thereafter again none appeared on behalf of the management as such the management was proceeded against *ex parte*. In order to prove his case, in *ex parte* evidence the workman examined himself as AW1 and deposed that he was appointed by the management as Stock Boy in the month of March, 1997 and was promoted to the post of Salesman on 01.06.2004 *vide* letter dated 28.05.2004. He remained in uninterrupted employment upto 27.10.2016 when his entry in College Shoes was banned on the pretext of transfer from Chandigarh to Shilong. He was drawing ₹ 14,300/- per month as wages at the time of termination. He further deposed that on 27.10.2016 he was issued letter dated 16.10.2016 by the management of M/s Aero Club *vide* which his services were transferred to Shilong, Meghalaya by the Senior General Manager of M/s Aero Club. According to the transfer letter he was to join at Shilong, Meghalaya on 22.10.2016. His attendance was used to mark by the management of M/s College Shoes and wages were also being paid by management of M/s College Shoes. He is not employee of M/s Aero Club so M/s Aero Club cannot transfer the services of employees of M/s College Shoes. Refusal of entry into College Shoes by the management amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management had also violated the provisions of section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and no retrenchment compensation was paid to him by the management.

6. Learned representative for the applicant has argued that the workman was appointed by the management in the month of March, 1997 and thereafter he was promoted as Salesman. Later on he was transferred by M/s Aero Club whereas he was working under M/s College Shoes. The management banned the entry of the workman and refused work to him which amounts to termination is retrenchment under Section

2(oo) of the ID Act so action of the management is illegal, wrongful, motivated, unjustified and against the principles of natural justice. He prayed for reinstatement of the workman with full back wages and without change in the service conditions.

7. After giving my careful consideration to the submissions of the workman, I find that the workman himself stepped into the witness box and alleged himself the employee of management i.e. M/s College Shoes and stating that he was appointed by the management as Stock Boy. Later on he was promoted by M/s College Shoes. He has placed on record copy of promotion order Exhibit 'A1' and he also placed on record copy of transfer order Exhibit 'A2' in which it is clearly mentioned that due to administrative reasons, the services of the workman are transferred from SCO No.30, Sector 17, Chandigarh to Shop No.152, Bhajanlall Srinivas Building, Police Bazar, Shilong, Meghalaya with effect from 22.10.2016. Apart from these two documents the workman has not placed on record any other document to prove that he was not employee of M/s Aero Club, by whom the transfer order has been issued to the workman.

8. In one way he has stated that he has been transferred from Sector 17, Chandigarh to Shilong, Meghalaya on the other hand he has stated that he is working with M/s College Shoes and he has no concern with Ms/ Aero Club whereas in the transfer order letter has been addressed to Mr. Kamal Kishore, Salesman, Woodland Store, SCO No.30, Sector 17, Chandigarh i.e. workman, which has been duly received by the workman.

9. For the sake of argument, if he has not been transferred by employer management then also the workman has failed to prove on record how the management refused the workman to enter and how his case is covered under Section 2(oo) of the ID Act. Further the workman has failed to produce any record to prove that his wages has been paid by M/s College Shoes and he is the employee of M/s College Shoes only and he has no relation with M/s Aero Club. No wages register and attendance register was summoned by the workman to prove his averments. By simply stating that he has been transferred by M/s Aero Club and he is not employee of M/s Aero Club, does not prove the fact that he has been retrenched. No doubt the management is *ex parte* in this case but the workman has to stand at his own legs that there is employer-employee relationship between him & management only i.e. management of M/s College Shoes and M/s Aero Club has no concern with it. So bald statement of the workman is not enough to prove his case. As per record, the workman has been duly transferred from Chandigarh to Shilong, Meghalaya on 22.10.2016 and any management can transfer his employee due to administrative reasons. Hence, the workman had failed to prove that his services were terminated illegally by the management.

10. In the light of discussion made above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 12th August, 2021.

(Sd.) . . . ,  
(ANSHUL BERRY),  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No.PB0095.

Secretary Labour,  
Chandigarh Administration.

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